

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EMILY E. BAJOREK-DELATER,

Plaintiff,

vs.

Case no. 17- -NH
Hon.

UNITED STATES OF AMERICA, CENTER FOR
FAMILY HEALTH, PROMITA ROYCHOUDHURY,
M.D., and DOROTHY BROWN, D.O.,
Jointly and severally,

Defendants.

BRIAN J. McKEEN (P34123)
KENNETH D. LEE (P75886)
McKEEN & ASSOCIATES, P.C.
Attorneys for Plaintiff
645 Griswold Street, Suite 4200
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**PLAINTIFF'S COMPLAINT, AFFIDAVITS OF MERIT,
AND DEMAND FOR JURY TRIAL**

NOW COMES Plaintiff, Emily E. Bajorek-Delater, by and through her attorneys,
McKeen & Associates, P.C., and for her Complaint, Affidavits of Merit, and Demand for Jury
Trial hereby states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this claim pursuant to 28 USC 1346 because the
United States is a Defendant.

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2. Venue is proper because Defendants Promita Roychoudhury, M.D., and Dorothy Brown, D.O., were federal employees when they worked for a federally funded clinic, Defendant Center for Family Health, which is located in Jackson, Michigan.

3. The Notice of Claim for Damage, Injury and Death was filed on January 13, 2016.

4. On September 1, 2016, the Department of Health & Human Services responded to said Notice, denying Emily's tort claim.

PARTIES

5. Plaintiff Emily E. Bajorek-Delater was at all times relevant a resident of the County of Jackson, State of Michigan.

6. Defendant Center for Family Health was at all times relevant hereto a health institution conducting business in the County of Jackson, State of Michigan, operated by the United States of America, and employed Defendants Promita Roychoudhury, M.D., and Dorothy Brown, D.O.

7. Defendant Promita Roychoudhury, M.D. was at all times relevant hereto a licensed and practicing physician, specializing in Family Medicine, conducting business in the County of Jackson, State of Michigan, and an employee of the United States of America, and Center for Family Health, and was acting in the course of her employment during her entire treatment of Plaintiff, Emily E. Bajorek-Delater.

8. Defendant Dorothy Brown, D.O. was at all times relevant hereto a licensed and practicing resident physician, practicing Family Medicine, conducting business in the County of Jackson, State of Michigan, and an employee of the United States of America, and Center for Family Health, and was acting in the course of her employment during her entire treatment of Plaintiff, Emily E. Bajorek-Delater.

FACTUAL ALLEGATIONS

9. In February of 2014, Emily E. Bajorek-Delater was a 30-year-old female reporting to Center for Family Health, a Federal Health Center Program grantee, seeking treatment for lower back pain described as “sciatica.”

10. Defendants Promita Roychoudhury, M.D., and Dorothy Brown, D.O., were the physicians in charge of Emily’s treatment at Center for Family Health.

11. Defendants Promita Roychoudhury, M.D., and Dorothy Brown, D.O., neglected to properly perform and appreciate a thorough history and physical examination, leading to a failure to timely and properly diagnose Emily with cauda equine syndrome (CES).

12. CES is a serious neurologic condition in which pressure exerted on the terminal end of the spinal cord causes loss of sensation, loss of motor function, alteration in bowel and bladder function, and associated sequelae.

13. Had Defendants performed a proper examination, and consulted with an appropriate specialist, much of Emily’s injuries may have been avoided.

COUNT I: MEDICAL NEGLIGENCE OF PROMITA ROYCHOUDHURY, M.D.

14. Plaintiff repeats and re-alleges the allegations contained in all prior paragraphs of Plaintiff’s Complaint as though fully incorporated herein.

15. Defendant Promita Roychoudhury, M.D., an employee of Center for Family Health, was negligent, inter alia, in the following particulars, in that a reasonable and prudent, licensed and practicing physician, specializing in Family Medicine, when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Emily E. Bajorek-Delater, had a duty to timely and properly:

- a. Perform and appreciate a thorough history and physical examination;
- b. Recognize and appreciate the patient’s signs, symptoms, and risk factors for a herniated disc or other neurologic conditions;
- c. Consult with and/or refer the patient to appropriate specialists, including a Neurosurgeon, after reviewing the MRI;

- d. Perform an MRI prior to physical therapy, and certainly after physical therapy and narcotics failed to treat the symptoms;
- e. Discuss prior and current back issues with Emily;
- f. Send Emily to a Neurosurgeon or Neurologist as soon as possible, as this more likely than not would have stopped Emily from receiving any permanent damage;
- g. Any additional acts of negligence identified through the discovery process.

16. Defendant Promita Roychoudhury, M.D. did none of these things, and such acts or omissions constitute professional negligence for which the Defendant Promita Roychoudhury, M.D. is directly liable to Plaintiff.

17. At all times relevant hereto, Defendant Promita Roychoudhury, M.D. was an employee, agent, servant, or ostensible agent of Center for Family Health, and the United States of America, who are vicariously liable for the negligence of Defendant Promita Roychoudhury, M.D. pursuant to the Doctrine of Respondeat Superior and ostensible agency.

18. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, Emily E. Bajorek-Delater has suffered permanent nerve damage, resulting in pain, numbness, left-leg paralysis, an inability to raise her toes, and left side drop foot.

19. As a consequence of the Defendants' negligence, Plaintiff further claims all elements of damages permitted under the Michigan statutory law, Federal law, and the common law, whether known now or whether becoming known during the pendency of this case.

20. The United States of America is liable to Plaintiff under principles of Respondeat Superior and actual agency because it employed Defendant Promita Roychoudhury, M.D.

WHEREFORE, Plaintiff hereby requests that this Court enter judgment in her favor against Defendants in whatever amount she is found to be entitled plus all allowable interest, costs, and attorney fees.

COUNT II: MEDICAL NEGLIGENCE OF DOROTHY BROWN, D.O.

21. Plaintiff repeats and re-alleges the allegations contained in all prior paragraphs of Plaintiff's Complaint as though fully incorporated herein.

22. Defendant Dorothy Brown, D.O., an employee of Center for Family Health, was negligent, inter alia, in the following particulars, in that a reasonable and prudent, licensed and practicing physician, specializing in Family Medicine, when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Emily E. Bajorek-Delater, had a duty to timely and properly:

- a. Perform and appreciate a thorough history and physical examination;
- b. Recognize and appreciate the patient's signs, symptoms, and risk factors for a herniated disc or other neurologic conditions;
- c. Consult with and/or refer the patient to appropriate specialists, including a Neurosurgeon, after reviewing the MRI;
- d. Perform an MRI prior to physical therapy, and certainly after physical therapy and narcotics failed to treat the symptoms;
- e. Discuss prior and current back issues with Emily;
- f. Send Emily to a Neurosurgeon or Neurologist as soon as possible, as this more likely than not would have stopped Emily from receiving any permanent damage;
- g. Any additional acts of negligence identified through the discovery process.

23. Defendant Dorothy Brown, D.O. did none of these things, and such acts or omissions constitute professional negligence for which the Defendant Dorothy Brown, D.O. is directly liable to Plaintiff.

24. At all times relevant hereto, Defendant Dorothy Brown, D.O. was an employee, agent, servant, or ostensible agent of Center for Family Health, and the United States of America, who are vicariously liable for the negligence of Defendant Dorothy Brown, D.O. pursuant to the Doctrine of Respondeat Superior and ostensible agency.

25. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, Emily E. Bajorek-Delater has suffered permanent nerve damage, resulting in pain, numbness, left-leg paralysis, an inability to raise her toes, and left side drop foot.

26. As a consequence of the Defendants' negligence, Plaintiff further claims all elements of damages permitted under the Michigan statutory law, Federal law, and the common law, whether known now or whether becoming known during the pendency of this case.

27. The United States of America is liable to Plaintiff under principles of Respondeat Superior and actual agency because it employed Defendant Dorothy Brown, D.O.

WHEREFORE, Plaintiff hereby requests that this Court enter judgment in her favor against Defendants in whatever amount she is found to be entitled plus all allowable interest, costs, and attorney fees.

COUNT III: MEDICAL NEGLIGENCE OF CENTER FOR FAMILY HEALTH

28. Plaintiff repeats and re-alleges the allegations contained in all prior paragraphs of Plaintiff's Complaint as though fully incorporated herein.

29. Defendant Center for Family Health was negligent, inter alia, in the following particulars, in that a licensed and accredited health care facility, through its agents, actual, and/or ostensible, servants, and/or employees, including, but not limited to, Promita Roychoudhury, M.D., and Dorothy Brown, D.O., when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Emily E. Bajorek-Delater, had a duty to:

- a. Select, employ, train and monitor its agents, actual and/or ostensible, servants, employees and/or its staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for a patient;

- b. Ensure that appropriate policies and procedures were adopted and followed including, but not limited to, the timely and proper diagnosis and treatment of a herniated disc which was pressing against the spinal cord;
- c. Prevent the patient from suffering permanent nerve damage using all reasonable means;
- d. Any additional acts of negligence identified through the discovery process.

30. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, Emily E. Bajorek-Delater has suffered permanent nerve damage, resulting in pain, numbness, left-leg paralysis, an inability to raise her toes, and left side drop foot.

31. As a consequence of the Defendants' negligence, Plaintiff further claims all elements of damages permitted under the Michigan statutory law, Federal law, and the common law, whether known now or whether becoming known during the pendency of this case.

32. The United States of America is liable to Plaintiff under principles of Respondeat Superior and actual agency because it employed Defendant Dorothy Brown, D.O.

WHEREFORE, Plaintiff hereby requests that this Court enter judgment in her favor against Defendants in whatever amount she is found to be entitled plus all allowable interest, costs, and attorney fees.

Respectfully Submitted:
McKEEN & ASSOCIATES, P.C.

/s/ Kenneth D. Lee

BRIAN J. McKEEN (P34123)

KENNETH D. LEE (P75886)

McKEEN & ASSOCIATES, P.C.

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Dated: February 22, 2017

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Hon.

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DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, Emily E. Bajorek-Delater, by and through her attorneys,
McKeen & Associates, P.C., and hereby demands a trial by jury in the above entitled cause of
action.

Respectfully Submitted:
McKEEN & ASSOCIATES, P.C.

/s/ Kenneth D. Lee

BRIAN J. McKEEN (P34123)
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Dated: February 22, 2017

Re: Emily E. Bajorek-Delater

AFFIDAVIT OF MERITORIOUS CLAIM OF THOMAS LAURENCE HUFFMAN, M.D.

STATE OF MISSOURI)
)ss.
COUNTY OF STONE)

I, Thomas Laurence Huffman, M.D., by this Affidavit, state that during the relevant time period at issue in this matter, I was a licensed and practicing physician, specializing in and devoting a majority of my professional time for the preceding year to, the clinical practice of Family Medicine, and I attest to the following:

1. I have read the Notice of Intent to File a Claim in this action.

2. I have reviewed medical records regarding the care and treatment provided by Promita Roychoudhury, M.D and Dorothy Brown, D.O. to Emily E. Bajorek Delater during the relevant time period.

3. Promita Roychoudhury, M.D., a licensed and practicing physician, specializing in Family Medicine, and an agent and/or employee of Center for Family Health, when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Emily E. Bajorek-Delater, had a duty to timely and properly:

- a. Perform and appreciate a thorough history and physical examination;
- b. Recognize and appreciate the patient's signs, symptoms, and risk factors for a herniated disc or other neurologic conditions;
- c. Consult with and/or refer the patient to appropriate specialists, including a Neurosurgeon after reviewing the MRI;

- d. Perform an MRI prior to physical therapy, and certainly after physical therapy and narcotics failed to treat the symptoms;
- e. Discuss prior and current back issues with Emily;
- f. Send Emily to a Neurosurgeon or Neurologist as soon as possible, as this more likely than not would have stopped Emily from receiving any permanent damage;
- g. Guard against additional acts of negligence identified through the discovery process.

4. Dorothy Brown, D.O., a licensed and practicing resident physician, practicing Family Medicine, and an agent and/or employee of Center for Family Health, when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Emily E. Bajorek-Delater, had a duty to timely and properly:

- a. Perform and appreciate a thorough history and physical examination;
- b. Recognize and appreciate the patient's signs, symptoms, and risk factors for a herniated disc or other neurologic conditions;
- c. Consult with and/or refer the patient to appropriate specialists, including a Neurosurgeon after reviewing the MRI;
- d. Perform an MRI prior to physical therapy, and certainly after physical therapy and narcotics failed to treat the symptoms;
- e. Discussing prior and current back issues with Emily;
- f. Send Emily to a Neurosurgeon or Neurologist as soon as possible, as this more likely than not would have stopped Emily from receiving any permanent damage;
- g. Guard against additional acts of negligence identified through the discovery process.

5. Center for Family Health, a duly accredited and licensed health care institution, by and through their agents, actual and/or ostensible, servants and/or employees, including but not limited to, Promita Roychoudhury, M.D., and Dorothy Brown, D.O., which holds itself out to the public as being competent of rendering medical services, when confronted with a patient with the signs and symptoms such as those demonstrated by Emily E. Bajorek-Delater, owed a duty to:

- a. Select, employ, train and monitor its employees, agents, servants, staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for Emily;
- b. Ensure that appropriate policies and procedures were adopted and followed including, but not limited to, the timely and proper diagnosis and treatment of a herniated disc or other serious neurologic conditions that were causing pressure to be exerted on the spinal cord;
- c. Prevent Emily from suffering permanent nerve damage using all reasonable means;
- d. Perform and appreciate a thorough history and physical examination;
- e. Recognize and appreciate the signs, symptoms, and risk factors for a herniated disc or other serious neurologic conditions;
- f. Consult with and/or refer Emily to appropriate specialists, including a neurosurgeon and/or neurologist;
- g. Perform an MRI prior to physical therapy, and certainly after physical therapy and narcotics had failed to treat Emily's symptoms;
- h. Discuss prior and current back issues with Emily;

- i. Send Emily to a neurosurgeon and/or neurologist as soon as possible, as this more likely than not would have prevented Emily from suffering permanent damage;
- j. Guard against additional acts of negligence identified through the discovery process.

6. It is my opinion, based upon the available information, as well as my training knowledge, education and experience in Family Medicine, that there was a failure to do those acts listed above, and such omissions constitute violations of the applicable standard of care.

7. In order to have conformed to the standard of care, the above-named should have done those things listed in paragraphs 3 through 5, and the respective subsections above.

8. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, Emily E. Bajorek-Delater has suffered permanent nerve damage, resulting in pain, numbness, left-leg paralysis, an inability to raise her toes, and left side drop foot.

9. This opinion is based upon a review of the information to date and may or may not change upon review of additional materials.

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Thomas L. Huffman
Thomas Laurence Huffman, M.D.

Subscribed and sworn to before me on
this 4th day of January, ²⁰¹⁷~~2016~~
Schyleur Walker [Name]
Notary Public Taney [County]
My Commission Expires: Dec 10, 2019

